

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1807 (PCB SA 03-20) w/CS Public Records
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>State Administration</u>	<u>4 Y, 0 N w/CS</u>	<u>Williamson</u>	<u>Everhart</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill reorganizes the Public Records Act (Act) in order to topically group similar subjects. At the recommendation of the Study Committee on Public Records, a definition of redact is created and inserted into the definitions section of the Act. Various sections of law are also updated to reflect changes in the timeframe for retaining specific public records.

This bill removes obsolete or superfluous language pertaining to public records, and makes editorial and conforming changes. This bill also removes public necessity statements that were inadvertently codified in the Florida Statutes.

This bill appears to have an insignificant fiscal impact on state government. See "FISCAL COMMENTS" section.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1807b.sa.doc
DATE: April 14, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

The Public Records Act

Chapter 119, F.S., the Public Records Act (Act), contains: policy statements regarding public records; maintenance and custody requirements; inspection, copying, and fee standards; an exemption review process; and exemptions. The Act has been amended numerous times but has not undergone a comprehensive review and revision.

In 2002, the Florida Legislature created a 22-member Study Committee on Public Records (study committee).¹ The study committee was legislatively directed to address a broad scope of issues regarding court records, official records, privacy, and public access. On February 15, 2003, the study committee submitted recommendations to the Governor, Chief Justice of the Supreme Court, President of the Senate, and Speaker of the House of Representatives. Two recommendations made to the Legislature included reorganizing the Act and creating a statutory definition of redaction.²

Records Retention

In addition to the Act, numerous other statutes require state and local agencies to retain and store records that have historical or other value. The statutes specify records retention periods of two years to 30 years and may authorize destruction following such periods. Other public records are to be permanently retained.

In 1999, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed the state's records management system and concluded that there was confusion regarding records retention and destruction. The OPPAGA report recommended that the Legislature review possible statutory changes to alleviate the confusion. As a result, the House Committee on Tourism reviewed the state's records management system during the 2001 interim. Based upon the committee's survey of state agencies and meetings with agencies and other House committee staff, the committee's report recommended statutory changes to alleviate the confusion.

During the 2002 regular session, HB 539 by the Committee on Tourism and Representative Trovillion was introduced. That bill reflected OPPAGA's suggested changes as well as reorganized the Act.

¹ See chapter 2002-302, L.O. F. The term of the Study Committee expires June 30, 2003.

² See STUDY COMMITTEE ON PUBLIC RECORDS Examination of the Effects of Advanced Technologies on Privacy and Public Access to Court Records and Official Records FINAL REPORT, February 15, 2003.

Public Necessity Statements

The Florida Constitution sets forth the state's public policy regarding access to government records and meetings. More specifically, every person has the right to inspect or copy any public record or to attend any public meeting of any collegial public body. The only exception to this constitutional requirement is a legislatively created public records or public meetings exemption.

A legislatively created public records or public meetings exemption must contain a statement of public necessity. The public necessity statement provides every justification for creating a public records or public meetings exemption, in case the exemption is challenged in court. The public necessity statement is codified in the Laws of Florida; it is not included in the Florida Statutes.

Effect of Bill

This bill reorganizes the Act in order to topically group similar subjects. Also, at the recommendation of the study committee, a definition of redaction is created and inserted into the definitions section of the Act. No other changes were made to definitions or requirements in the Act, except to conform to Article I, s. 24 of the Florida Constitution.

This bill amends various sections of law regarding the reduction of timeframes for or elimination of retention of specific records if: the current retention requirements are no longer relevant to the respective agency's statutory requirements; the records are no longer being maintained by the originating agency; the retention timeframe is inordinate; the records are required to be maintained in outdated formats; or the records are retained in a format or timeframe contrary to state records retention laws. This bill also amends certain sections of law containing the phrase "permanent record" or "permanent file" in order to specify that such records do not require indefinite retention.

This bill amends s. 257.36, F.S., to require that when an agency's duty or responsibility is transferred to another agency or entity, the receiving agency or entity becomes the official records custodian. When an agency or entity is dissolved, the Executive Office of the Governor becomes the official records custodian. Designation of the records custodian must be in accordance with s. 119.021, F.S. The records custodian is responsible for payment of the storage service charge regarding records.

This bill repeals ss. 119.0115, 119.012, 119.02, 119.031, 119.041, 119.05, 119.06, 119.08, 119.085, 119.09, 119.10, 212.095(6)(d), and 238.03(9), F.S. See "SECTION DIRECTORY" for further details.

Additionally, this bill corrects numerous cross-references necessitated by the renumbering of sections in the Act, and adds other sections of law that need reference changes; deletes superfluous language referencing the Federal Code of Regulation because these provisions are no longer necessary; and makes numerous editorial changes.

Finally, this bill removes public necessity statements that were inadvertently codified in the Florida Statutes.

C. SECTION DIRECTORY:

Section 1. Amends s. 18.20(1), F.S., removing the word "permanent" from the phrase "permanent record" regarding the Treasurer's reproduction of warrants, records, and documents.

Section 2. Creates s. 39.2021, F.S., relocating the provision allowing a person or organization to petition the court for access to records of the Department of Children and Family Services (DCFS).

Section 3. Amends s. 119.01, F.S., compiling all of the existing policy statements contained in the Act into one general state policy section.

Section 4. Amends s. 119.011, F.S., compiling and alphabetizing definitions distributed throughout the Act into a designated definitions section. Creates a definition of the term “redact”.

Section 5. Repeals ss. 119.0115, 119.012, and 119.02, F.S. (The provisions are relocated to other sections.)

Section 6. Substantially rewords s. 119.021, F.S., relating to designation of a custodian of public records. Includes custodial requirements relating to the maintenance, preservation, and retention of public records.

Section 7. Repeals ss. 119.031, 119.041, 119.05, and 119.06, F.S. (The provisions are relocated to other sections.)

Section 8. Amends s. 119.07, F.S., topically co-locating current requirements from other sections of the Act.

Section 9. Repeals s. 119.08, F.S. (The provision is relocated to another section.)

Section 10. Amends s. 119.084, F.S., relating to copyright of data processing software created by governmental agencies; sale price; and licensing fees.

Section 11. Repeals ss. 119.085 and 119.09, F.S. (The provisions are relocated to other sections.)

Section 12. Amends s. 119.10, F.S., making clarifying changes.

Section 13. Amends s. 119.105, F.S., removing the reference to “general or special law”.³

Section 14. Amends s. 120.55(1)(a), F.S., removing language relating to publishing in a permanent compilation entitled “Florida Administrative Weekly”. Adds language relating to a continuous revision system, compiling, and publishing the “Florida Administrative Code”.

Section 15. Amends s. 257.36(2)(b), F.S., providing that when an agency’s duty or responsibility is transferred to another agency or entity, the receiving agency or entity becomes the official records custodian. When an agency or entity is dissolved, the Executive Office of the Governor becomes the official records custodian.

Section 16. Amends s. 328.15(5), F.S., removing the words “a permanent” and inserting the words “an official” regarding recorded liens records.

Section 17. Amends s. 372.5717(4), F.S., removing the word “permanent” regarding hunter safety certification cards for the Florida Fish and Wildlife Conservation Commission.

Section 18. Creates s. 415.1071, F.S., relocating the provision allowing a person or organization to petition the court for access to records of DCFS.

Section 19. Amends s. 560.121(2), F.S., reducing the retention of examination reports, investigatory records, and applications from 10 years to three years. Provides for application records and related information compiled by the Department of Banking and Finance (DBF) or photographic copies to be retained by DBF for a period of at least two years.

Section 20. Amends s. 560.123(6), F.S., reducing the retention of DBF reports of transactions involving currency or monetary instruments from five calendar years to three calendar years.

³ This section was removed because under Article I, s. 24 of the State Constitution, an exemption cannot be enacted in special law.

Section 21. Amends s. 560.129(5), F.S., reducing the retention of examination reports, investigatory records, and applications from 10 years to three years. Provides that application records and related information compiled by DBF or photographic copies be retained for a period of at least two years.

Section 22. Amends s. 624.311(3), F.S., allowing the Department of Insurance to provide for electronic recordkeeping. Removes language requiring that each page be reproduced in exact conformity with the original.

Section 23. Amends s. 624.312(1), F.S., providing that other reproductions from an electronic recordkeeping system, before October 1, 1982, must be admissible in evidence as originals. After October 1, 1982, certified reproductions from an electronic recordkeeping system will be admissible in evidence as originals.

Section 24. Amends s. 633.527(2), F.S., reducing the retention for all examination test questions, answer sheets, and grades administered under the State Fire Marshal from five years to two years.

Section 25. Amends s. 655.50(8), F.S., relating to DBF retaining copies of certain reports.⁴ Removes the 10 year retention requirement and provides a five year retention requirement as contained in 31 C.F.R., parts 103.33 and 103.34, which is the minimum federal retention schedule contained in the federal code, with the exception of trust companies, which are state regulated.

Section 26. Amends s. 945.25, F.S., replacing the word "permanent" with the word "official" and replaces the words "may be practicably available" with the word "practical". Removes s. 945.25(2), F.S., regarding permanent records of persons placed on probation and every person who may be subject to pardon and commutation of sentence.⁵

Section 27. Amends s. 985.31(4)(e), F.S., removing the word "permanent" from a child's medical file for serologic blood or urine test on a serious or habitual juvenile offender.

Section 28. Repeals s. 212.095(6)(d), F.S., removing a provision that is no longer utilized or applicable to current business practices.⁶

Section 29. Repeals s. 238.03(9), F.S., removing antiquated language regarding a system that is no longer utilized.⁷

Sections 30 through 54. Makes conforming changes.

Section 55. Repeals s. 430.015, F.S., regarding a public necessity statement for a Department of Elderly Affairs public records exemption.

Section 56. Amends s. 440.132(2), F.S., regarding a public necessity statement for an Agency for Health Care Administration public records exemption, and repeals the public necessity statement.

Section 57. Repeals s. 723.0065, F.S., regarding a public necessity statement for a Division of Florida Land Sales, Condominiums, and Mobile Homes public records exemption. Repeals s. 768.301, F.S., regarding a public necessity statement for a public records and public meetings exemption for state

⁴ DBF no longer receives paper copies of currency transaction report forms. Those reports are electronically filed with the federal government and maintained in a database that can be accessed by DBF's Investigations Office.

⁵ This section is being removed due to the statutory elimination of parole for most offenses committed on or after October 1, 1983, and all remaining cases for commitments committed on or after October 1, 1995.

⁶ Tourism Committee Records Management for State Agencies, November 2001.

⁷ *Id.*

administered risk management programs. Repeals s. 815.045, F.S., regarding a public necessity statement for a public records exemption regarding trade secret information held by an agency.

Section 58. Amends s. 943.031(7)(a)2., F.S., regarding a public necessity statement for a public records and public meetings exemption for the Florida Violent Crime and Drug Control Council, and repeals the public necessity statement.

Section 59. Provides a July 1, 2003, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: See "FISCAL COMMENTS" section for details.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS:

There are costs associated with a complete revision to a statute, including printing costs. It would be expected that over time, as exemptions are consolidated and their number reduced, costs will be reduced. Further, as it becomes less difficult to find exemptions that are applicable, costs will be reduced.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. This bill does not affect municipal or county government.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill is a repeater from the 2002 regular session.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2003, the Committee on State Administration adopted an amendment to remove section 30 of the bill regarding procedures for cutting down seed trees, because it appeared to raise single-subject concerns.

On April 14, 2003, the Committee on State Administration adopted four amendments to HB 1807, and reported the bill favorably with CS. The first amendment removes new language contained in the bill and replaces it with language found in current law. The second amendment removes language regarding the criteria the Governor must follow when making an executive order confidential. This language is being removed because it appears to be a substantive change rather than a conforming change. The third amendment removes language regarding criteria the Department of Banking and Finance must consider when determining whether hearings and proceedings should be closed to the public. This language also appears to be a substantive change rather than a conforming change. The final amendment removes public necessity statements that were inadvertently codified in the Florida Statutes.